

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the Application
of Becky Aburine to Provide Family Child
Care under Minnesota Rules, Parts
9502.0300 to 9502.0445.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at 9:30 a.m. on September 2, 1999, at 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota. The record was closed upon adjournment of the hearing that day.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue South, Minneapolis, Minnesota 55415, appeared on behalf of Hennepin County Children and Family Services Department ("the Local Agency" or "Hennepin County") and the Minnesota Department of Human Services ("the Department"). There was no appearance by Becky Aburine ("Applicant"), 4034 28th Avenue S., Minneapolis, Minnesota 55406, and no one appeared on her behalf.

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. §14.61, the final decision of the Commissioner of Human Services shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner of Human Services. Parties should contact Jerry Kerber, Director of Licensing, Minnesota Department of Human Services, Second Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3815, telephone (651) 296-4473, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the Applicant should be denied a family day care license because she has a disqualification under Minnesota Rule 9502.0335, subp. 6.D.

Based upon the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 26, 1993, the Applicant purchased furniture at a retail store and paid by check. The check was dishonored by the bank the check was drawn upon and the Applicant did not pay the retailer for the furniture. The Applicant was charged with a gross misdemeanor and convicted of theft.^[1]

2. The Applicant submitted an application for licensure as a family daycare provider. As part of the application process, background checks were performed on all the persons living in the proposed daycare home. On March 15, 1999, the Local Agency advised Applicant that her conviction for theft arising from the 1993 incident disqualified her from licensure under Minn. Rule 9502.0335, subp. 6.D.^[2] The notice advised Applicant of the basis for the disqualification and her right to appeal the disqualification. The Applicant did not take an appeal from the finding of disqualification.

3. On April 12, 1999, Hennepin County recommended to the Department that the Applicant be denied licensure as a family day care provider.^[3] The only basis for the recommendation was the existence of the disqualification.

4. On April 21, 1999, the Department denied the Applicant's application for licensure. The sole reason for denial indicated was the existence of a disqualification under Minn. Rule 9502.0335, subp. 6.D.^[4] The denial letter informed the Applicant of the right to hearing on the denial. In May, 1999, Applicant appealed the denial of licensure.^[5]

5. The Department issued a Notice of and Order for Hearing in this matter on May 18, 1999, which was served on the Licensee by mail on July 14, 1999.^[6]

Based upon the foregoing facts the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§14.50 and 245A.08.

2. The Notice of Hearing is proper in all respects and the Local Agency and the Department have complied with all substantive and procedural requirements of law and rule.

3. Minn. R. 9502.0335, subp. 6, sets out the standards for granting family daycare licenses in pertinent part:

Subpart 6. **Disqualification factors.** An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

* * *

D. Has a disqualification under part 9543.3070.

* * * *

4. Minn. Rule 9543.3070 has been superceded by Minn. Stat. § 245.04, subd. 3d. The Applicant is disqualified under the terms of Minn. Stat. § 245.04, subd. 3d.

5. Denial of the Applicant's application is required under Minn. R. 9502.0335, subp. 6.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is hereby respectfully recommended that the application of Becky Aburine for a family day care license be DENIED.

Dated this 14th day of September, 1999.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. §14.62, subd. 1, the Agency is required to serve a copy of its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded

MEMORANDUM

The rule and statutes regarding disqualification and its impact on a license application are clear. Once the disqualification process is final, the Administrative Law Judge cannot reexamine the underlying facts of the disqualification in a contested case regarding licensure.^[7] The Applicant cannot challenge the propriety of the disqualification in this forum. Therefore, the Administrative Law Judge recommends that the Applicant's appeal be DENIED.

S.M.M.

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- ^[1] Exhibit 3.
^[2] Exhibit 2.
^[3] Exhibit 3.
^[4] Exhibit 5.
^[5] Exhibit 6.
^[6] Exhibit 7.
^[7] Minn. Stat. § 245A.04, subd. 3b(e).